**WONG FOOK NYEN**

**v.**

**TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ORS.**

HIGH COURT MALAYA, ALOR SETAR
LIM BENG CHOON J
[CRIMINAL APPLICATION NO. 54-01-87]
29 MARCH 1987

***CRIMINAL PROCEDURE:*** *Section 39B of the Dangerous Drugs Act 1952 - Section 117 of the Criminal Procedure Code - Habeas corpus application - Sections 3(1), 5(2), (3), 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 - Article 5(3) of the Constitution - Must grounds of arrest be given - Must detention order be issued on day of arrest - Must detention order be served.*

The applicant applied for a writ of *habeas corpus* to be issued directing the three respondents to have the person of the detainee brought before Court. The applicant had been detained in the police lockup from 19 October 1986 to 2 November 1986 as an under trial prisoner. On 2 November 1986 he was discharged by a Magistrate for lack of evidence. Soon after his release he was rearrested purportedly under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985. He was detained in the police lockup until 25 December 1986 when an order of detention made by the 1st respondent was served on the applicant. Thereafter he was taken to Pulau Jerejak for a period for two years from 23 December 1986.

**Held:**

**[1]** It was a salutary rule that the grant of *habeas corpus* was as of right and it was not within the discretion of the Court to issue or not to issue the order if the person was unlawfully detained.

**[2]** Although the seven contentions raised by Counsel for the applicant at the hearing of the motion did not strictly conform with the purport of the grounds as stated in the affidavit, since the application for *habeas corpus* constitutes the highest constitutional safeguard against the infringement of personal liberty of a subject, Counsel was allowed to raise such contentions as were necessary in order to enable the applicant to show that his detention was unlawful.

**[3]** There was doubt that the Act was silent as regards the need to inform a person of the grounds of his arrest. Furthermore, the Act was made pursuant to Article 149 of the Constitution. It would therefore appear at first blush that s. 3(1) was deliberately designed to obviate the fundamental constitutional requirement of informing the person arrested as soon as may be of the grounds of his arrest as entrenched in Clause (3) of Article 5 of the Constitution. However there was no express recital or provision in the Act which permits a preventive detention in contravention of Article 5(3), and in the absence of such, it cannot be lightly assumed that the legislature intended the curtailment of such a fundamental safeguard entrenched in the Constitution. It was also a basic and elementary right of a person to know the grounds of his arrest. Accordingly in arresting a person under s. 3(1), the arresting officer must inform the person arrested of the grounds upon which he was arrested. In the present case however, upon the affidavit evidence, it was a proper conclusion that sufficient information regarding the grounds of his arrest had been conveyed to the accused.

**[4]** In the light of the checks and balances stipulated to ensure that a person was not wrongfully detained under the Act, it was futile for Counsel to argue that since there was a delay of 46 days between the arrest and the signing of the detention order, the detention was bad. The underlying policy of the Act concerned the following:

(a) the police should not be allowed to abuse the powers conferred under s. 3(1) and

(b) there must be sufficient and well founded material placed before the Minister before he can arrive at a proper and correct decision.

**[5]** The delay of six days between the signing of the detention order and it service upon the applicant, did not invalidate the detention order. The words used in the section were "as soon as may be possible and not "forthwith." In the present case the six day delay was not unreasonable as the detention order was made by the 1st respondent in Kuala Lumpur and the service of the order had to be effected in Alor Setar.

**[6]** The purpose of the Act was to provide for the preventive detention of persons associated with any activity relating to or involving trafficking in dangerous drugs. Accordingly the past activities of the applicant as described in the statement were not only relevant but envisaged the very type of conduct which the Act endeavored to prevent any person from engaging in the detaining authority had every right to take into account the past activities of the applicant.

**[7]** In general, in proceedings such as these the Court did not sit in appeal against the decision of the Minister regarding the material on which the detention order was made. The Court cannot interfere with decision of the Minister on the ground that if the Court had examined the material it would have come to a different conclusion on the adequacy of the material upon which the decision to detain was based.

**[8]** In terms of Article 43A as amended, the Deputy Minister was granted all the powers of a Minister to enable him to assist the Minister in the discharge of the latters duties and functions pertaining to his Ministry. It was perfectly proper for the Deputy Minister to exercise the powers conferred upon the Minister by the Act.

**[9]** Although the copy of the detention order served on the applicant did not carry the Deputy Minister's signature but merely carried his rubber stamp, since the original carried the Deputy Minister's signature and also the signature of the applicant appended to a statement to the effect that a copy of if had been served on him together with two copies of the statement of allegation of fact and a copy of the notice informing him of his right to make representation to the Advisory Board and the relevant form to enable him to do so, it cannot be contended that the police had failed to comply with s. 9(1) of the Act.

**[10]** The mere fact that the applicant had been released for lack of evidence and immediately rearrested did not by itself impute bad faith. The onus of proving bad faith on the detaining officer was on the applicant and was normally extremely difficult to discharge as the requirement was proof of improper or bad motive and not mere suspicion if a detention order was sought to be invalidated on grounds of bad faith.

*[Application dismissed.]*

**Cases referred to:**

*Andrew s/o Thamboosamay v. Supt. of Pudu Prisons, Kuala Lumpur [1976] 2 MLJ 156*
*Re Tan Boon Liat @ Allen et al [1977] 2 MLJ 108*
*Christie & Anor. v. Leachinsky [1947] AC 373*
*Re P.E. Long @ Jimmy & Ors. [1976] 2 MLJ 133*

*I.G.P. & Anor. v. Lee Kim Hoong [1979] 2 MLJ 291*
*K.N. Joglekar v. Commissioner of Police [1957] AIR SC 28*
*Sahib Singh Dugel v. Union of India [1966] AIR SC 340*
*Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia [1969] 2 MLJ 129*
*State of Bombay v. Atma Ram [1951] AIR SC 157*
*Yeap Hock Seng v. Minister of Home Affairs Malaysia [1975] 2 MLJ 279*
*Carltona Ltd. v. Commissioners of Works [1943] 2 All ER 560*

**Legislation referred to:**
Criminal Procedure Code, s. 117
Dangerous Drugs Act 1952, s. 39B
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 2, 3, (1),(2), 4, 5, (2), (3), 6, (1), 9(1)
Emergency (Public Order and Prevention of Crime) Ordinance 1969, ss. 3(1), 4(1)
Federal Constitution, arts. 5, (2), (3), 9, 10, 149
Preventive Detention Act [Ind], s. 3(3)

*For the appellant - Ranjit Sing; M/s. Jagjit Singh & Co.*
*For the respondent - Gooi Soon Seng; DPP*

**JUDGMENT**

**Lim Beng Choon J:**

On 24 February 1987 a notice of motion was filed by Wong Fook Nyen ("the applicant") in this Court applying for a writ of *habeas corpus* to be issued directing the three respondents to have the person of the detainee brought before this Court to enable him to seek redress for what he alleged to be illegal restraint of his person and unlawful deprivation of his liberty. As the detainee was and still is detained at the Pusat Pemulihan Akhlak at Pilau Jerejak ("Pulau Jerejak") and it would cause delay and inconvenience for him to make a supporting affidavit. His wife, Puan Wong Nyok Choo, therefore made the necessary affidavit on his behalf.

When the application came up for hearing on 14 March 1987, the learned Counsel for the applicant applied to this Court for a postponement as he wanted time to file an affidavit from the applicant himself to counter certain allegations made in the affidavit of the police officers who were involved in the arrest and detention of the applicant. I allowed his application as I felt that since this an application for a writ of *habeas corpus* which is a high prerogative writ for the enforcement of the constitutional right of the personal liberty of the subject and a remedy of the highest order to obtain his release from any manner of unjustifiable detention pursuant to Article 5(2) of the Constitution and Chapter 36 of the Criminal Procedure Code, I should give the applicant every opportunity to present his case. I therefore directed that the application should be heard on 25 March 1987.

When the application came up for hearing on 25 March, the learned Counsel raised a preliminary objection in respect of the affidavits in reply filed by the learned DPP which were served on him only on 24 March 1987. However, notwithstanding the short service of the said affidavits the learned Counsel was prepared to proceed with the hearing although he made a faint attempt to urge this Court to disregard the said affidavits. In the result, I proceeded with the hearing of the application as the learned Counsel for the applicant agreed that there was no need for the applicant to put in any further affidavit.

From the affidavit evidence the following facts can hardly be disputed. On 19 October 1986 the applicant was arrested for trafficking certain dangerous drugs and put in the police lockup as an under trial prisoner for an offence under s. 39B of the Dangerous Drugs Act 1952.

Apparently he was placed under remand under s. 117 of the Criminal Procedure Code until 2 November 1987 in connection with the criminal case pending against the applicant. At about 2.15 p.m. on 2 November 1986, Inspector Hassan bin Sernek ("Inspector Hassan") brought the applicant before the Magistrate's Court at Sungei Patani and informed the Magistrate that the police could not gather sufficient evidence for the conviction of the applicant. Consequently the Magistrate discharged the applicant but soon after he was released Inspector Hassan effected an arrest of the applicant purportedly under s. 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985, Act 316 ("the Act").

The applicant was detained in the police lockup in Alor Setar until 25 December 1986 when Inspector Makhotar B. Yaacob served an order of detention made by the 1st respondent on the applicant. Thereafter he was taken to Pulau Jerejak for detention for a period of two years as from 23 December 1986.

Before I proceed to examine the various contentions raised by the several affidavits, I should remind myself of the salutary rule that the grant of *habeas corpus* is as of right and it is not within the discretion of the Court to issue or not to issue the order if the person is unlawfully detained. This salutary rule is emphasised in two judgments of the Federal Court. In the case of *Andrew s/o Thamboosamy v. Supt. of Pudu Prisons, Kuala Lumpur* [1976] 2 MLJ 156 Suffian LP (as he then was) said at p. 158,

> With respect we agree that any form of detention does violence to Article 5(1) of the Constitution which reads:
>
> > 5(1) No person shall be deprived of his ... personal liberty save in accordance with law," and hence power given by law to detain must be construed strictly and in cases of doubt or ambiguity the Court should lean in favour of the subject. Government is the most powerful body in the country and the Court should be vigilant to see the Government does not exceed its power when dealing with individuals. But at the same time we are of the opinion that the problem of dealing with illegal immigrants is a matter of public policy to be decided by Parliament and by the Executive, that in this matter the proper authority for enacting the necessary legislation in Parliament and that if the Government exercises a power conferred on it by Parliament and keeps within the law, then the duty of the Court is quite clear; the Court should apply the law, no matter how harsh its effect may be on the immigrant. His remedy is then not judicial, but political and administrative.

The second case is *Re Tan Boon Liat @ Allen et al* [1977] 2 MLJ 108 where Lee Hun Hoe CJ (Borneo) said at p. 113,

> Further preventive detention is a very serious invasion of personal liberty. Certain safeguards are provided by law for the protection of the subject and must be followed scrupulously. Where statutory requirements have to be complied with there must be strict complied with there must be strict compliance since it affects matters of such fundamental importance as the liberty of the subject. In *Ex parte Johannes Choeldi & Ors.* Rigby J said to the effect that where personal liberty is concerned an applicant in applying for a writ of *habeas corpus* is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty. Where the detention is not in accordance with law such detention is bad and the person is entitled to be released forthwith. The executive may decide to arrest him on his release and the process starts all over again. The Court is not concerned with such matters at this stage. The function of the Court is to interpret the law in accordance with established principles of construction.

I shall therefore proceed to deal with this application bearing in mind the propositions enunciated in the two judgments which I have cited.

It is relevant at the outset to reproduce the detention order of the Minister concerned ("the detention order") which directed the applicant to be detained under s. 6(1) of the Act. The order reads as follows:

Akta Dadah Berbahaya
(Langkah-Langkah Pencegahan Khas), 1985 (Akta 316)
**Perintah Tahanan** (Seksyen 6(1))

Kepada:
Penguasa
Pusat Pemulihan Akhlak,
Pulau Jerejak, Pulau Pinang
Ketua Polis Negara,
Bukit Aman,
50560 Kuala Lumpur

Semua Pegawai Polis Di Raja Malaysia yand berkenaan.

Bahawasanya saya, Menteri Dalam Negeri, berpuashati yang Perintah ini adalah perlu dibuat ke atas orang yang namanya tersebut dibawah ini dengan tujuan hendak **mencegah beliau daripada melakukan apa-apa aktiviti yang berhubungan dengan atau yang melibatkan pengedaran dadah berbahaya.**

| Nama | Nombor Kad Pengenalan |
|---|---|
| Wong Fook Nyen | 6759525 |

Oleh yang demikian, pada menjalankan kuasa yang diberi kepada saya di bawah Seksyen 6(1) Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas), 1985, maka saya mengarahkan dengan perintah ini supaya orang yang namanya tersebut di atas ditahan selama dua tahun mulai dari 23 haribulan Disember 1986 di Pusat Pemulihan Akhlak, Pulau Jerejak, Pulau Pinang atau di mana-mana tempat lain sebagaimana yang diarah oleh saya dari semasa ke semasa.

Ditandatangani pada 19 haribulan Disember 1986. (Emphasis is mine)

It was signed by Dato Megat Junid bin Megat Ayob ("the first respondent") in his capacity as Timbalan Menteri Dalam Negeri Malaysia. A statement in writing of the allegations of fact dated the same day on which the detention order was made was attached to the said order. There were nine allegations set out in the said statement regarding the activities of the applicant which the first respondent took into consideration in arriving at his conclusion that the detention order should be made. In her affidavit dated 22 February 1987 supporting the motion, the wife of the applicant, Puan Wong Nyuk Choo, contended that the detention order was unjust unlawful and done in bad faith in that:

(a) The 1st respondent has wrongfully applied the Dangerous Drugs (Special Preventive Measures) Act, 1985 to the applicant.

(b) The detention of the applicant under the Dangerous Drugs (Special Preventive Measures) Act, 1985 is done in bad faith in that the applicant was released after being earlier detained under s. 117 of the Criminal Procedure Code during which period of detention the police must have carried out their investigations and they were unable to sustain any charge against the applicant. This is why the applicant was released and re-arrested soon thereafter.

(c) The detention order was issued by the 1st respondent under the Dangerous Drugs (Special Preventive Measures) Act, 1985 without the applicant having had an opportunity of making representation against the said detention Order as is provided for under Article 151(1)(a) of the Federal Constitution.

(d) The said detention order should be made by the Minister for Home Affairs and not by the Deputy Minister.

There was another ground (e) which the learned Counsel for the applicant rightly, I think, conceded that the applicant would not pursue that ground.

However at the hearing of the motion the learned Counsel raised seven contentions which did not strictly conform with the purport of the grounds as stated in the affidavit of 22 February 1987. However that may be, I again reiterate that in a matter of an application for *habeas corpus* which is of the highest constitutional safeguard against the infringement of the personal liberty of a subject, I would allow the learned Counsel to raise such contentions as were necessary in order to enable the applicant to show that his detention was unlawful.

The learned Counsel's first contention (if I understand him correctly) was that as the applicant was not informed of the grounds of his arrest, there had been a violation of Article 5(3) of the Constitution and in the consequence, his arrest and the subsequent detention order issued by the 1st respondent was null and void. Before I proceed to consider this contention, I must once again remind myself of the principle laid down in the two passages of the judgments of the Federal Court which I have cited earlier. However that may be, in the ultimate analysis the efficacy of *habeas corpus* must depend on the phraseology of the statute authorising detention. Or to put it simply the question I must ask myself in the present proceedings is how wide or narrow is the power given to the detaining authority under the Act? There is no doubt that the Act is silent as regards to the need to inform the applicant of the grounds of his arrest under s. 3(1). Furthermore as the Act was made pursuant to Article 149 of the Constitution, any provisions therein contained that are inconsistent with any of the provisions of Articles 5, 9, 10 or 13 cannot render the act invalid or *ultra vires* the Constitution. It would therefore appear at the first blush that the provision of s. 3(1) was deliberately designed to obviate the fundamental constitutional requirement of informing the applicant as soon as may be of the grounds of his arrest as entrenched in Clause (3) of Article 5 of the Constitution. It would follow therefore that there is no need to comply with this fundamental constitutional requirement when the police arrests a person pursuant to s. 3(1) of the Act. However that may be, it is equally clear that there is no express recital or provision in the Act which permits a preventive detention in contravention of Article 5(3) and in the absence of such express recital or provision it cannot be assumed that the legislature in making the Act intended to curtail or do away with such a fundamental safeguard as entrenched in the Constitution - see per judgment of H.S. Ong FJ in *Re Tan Boon Liat @ Allen* (*supra*). In any case it is basic elementary right of every person to know the ground of his arrest - see *Christie & Anor. v. Leachinsky* [1947] AC 373 @ 388 where it is stated:

> If the charge on suspicion of which the man is arrested is then and there made known to him, he had the opportunity of giving an explanation of any misunderstanding or of calling attention to other persons for whom he may have been mistaken,

At any rate I can see no reason why the arresting officer could not inform the person the ground of his arrest bearing in mind that he must in the first place have reason to believe that there were grounds which could justify the detention of the arrested person under s. 6(1) of the Act. I therefore hold that in arresting a person under s. 3(1) the arresting officer must inform him of the grounds of his arrest. In the present case the applicant had put in an affidavit dated 14 March 1987 where he alleged in para. 3 thereof that the arresting officer did not at any time inform him of the reason of his arrest and that he merely said that he was acting on orders. On the other hand the arresting officer Inspector Hassan bin Sernek

also filed in an affidavit where he asserted in para. 3 thereof that on 2 November 1986 at about 3.20 p.m. he effected the arrest of the applicant and in the course of doing so he did inform him of the grounds of his arrest. What he told the applicant were that he had reason to believe that the applicant had been associated with activities relating to the trafficking of drugs and that it was necessary in the interest of public order that he be detained. The assertion of Inspector Hassan bin Sernek is corroborated by Sgt. Ramli bin Shaibi who in his affidavit dated 23 March 1987 stated that on 2 November 1986 he and Inspector Hassan bin Sernek escorted the applicant to the Magistrate Court and that after the applicant was released by the Magistrate the said Inspector Hassan arrested the applicant and in doing so Sgt. Ramli did hear the said Inspector informing the applicant of the grounds of his arrest in the manner as asserted by the said Inspector in his affidavit. It is to be noted that the wife of the applicant in her affidavit dated 22 February 1987 merely mentioned that the applicant informed her that he was beaten up by the police who forced him to sign the detention order and the accompanying statement of facts but she made no mention about the failure on the part of the police to inform the applicant of the grounds of his arrest. In the circumstances I have no reason to reject the affidavit evidence of the two police officers and I must hold that the applicant was informed of the grounds of his arrest by the arresting officer, Inspector Hassan bin Sernek. However the learned Counsel went on to contend that even assuming that Inspector Hassan had informed the applicant of the grounds of his arrest as asserted in his affidavit the said "grounds" were insufficient to satisfy the requirement of Clause (3) of Article 5 of the Constitution. I am afraid I cannot accept such a contention as it has been stated that it is not necessary for a person making the arrest even under the ordinary law to state the charge in technical or precise language. In the present case the arresting officer had told the applicant that the grounds of his arrest were that there was reason to believe that the applicant was associated with activities relating to the trafficking of drugs and that it was necessary in the interest of public order to detain him under s. 3(1) of the Act. What else could we expect the arresting officer of tell him at that stage? Reference may be made of *Re P.E. Long @ Jimmy & Ors.* [1976] 2 MLJ 133 @ 135 where the late Arulanandom J held that it was good enough when the arresting officer in that case had informed the detainee that he was arresting him under s. 3(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969. Likewise in *I.G.P. & Anor. v. Lee Kim Hoong* [1979] 2 MLJ 291 @ 292 Harun J made this observation:

> I should make it clear that the police are not being called upon to disclose the evidence which led to the arrest and detention but merely the grounds of arrest. All the Police have to say, for example, is that "Lee was arrested because we have reason to believe that it is necessary for the prevention of crimes involving violence.

The second contention put forth by the learned Counsel was that as the applicant was arrested on 2 November 1986 and the detention order was made by the 1st respondent only on 19 December 1986 (some 46 days later), the detention of the applicant could not be sustained because it amounted to (to use his own words) "arrest first and investigate later". With due respect to the learned Counsel, I am afraid he had overlooked the underlying policy of the Act. A perusal of the provisions of s. 3 to s. 6 of the Act show the Parliament in its wisdom clearly wanted to ensure that there should be sufficient grounds before a person could be detained under the Act. Hence Parliament inserted the following checks and balances to ensure that no one should be wrongfully detained under the Act:

(1) although any police officer may without a warrant, arrest and detain a person when he has reason to believe that there are grounds which could justify the detention of that person under the Act, nevertheless the police must carry out further investigation to

make sure that the grounds for detaining that person are well-founded although they may not necessarily be sufficient to convict that person in a Court of law;

(2) the police cannot detain any person for more than 14 days without the sanction of a DSP who must forthwith send a report to the IGP who in turn must also convey that report to the Minister. This step is necessary to ensure that the police would not abuse the power conferred on them under s. 3(1).

(3) The police must then carry out further investigations under s. 4 of the Act to ensure that the grounds for detaining the arrested person are not flimsy and tenuous.

(4) After the investigations the police must then put up a complete report and send a copy of the same to the Inquiry Officers set up in s. 5 of the Act and another copy to the Minister.

(5) On receipt of the police report the inquiry officers must again under s. 5(2) and (3) make further investigations to ensure that there are good and sufficient grounds to enable the Minister to arrive at a proper and correct decision before he makes a detention order under s. 6(1).

(6) After the inquiry officers have completed their investigations and found that there are good and sufficient grounds to detain the person so arrested under s. 3(1) they must then submit a report to the Minister.

(7) Upon receipt of this report from the inquiry officer, then and only then can the Minister decide whether or not to issue a detention order under s. 6(1).

Needless to say that it would take some time to carry out the investigations as specified in the Act. It is therefore futile for the learned Counsel to say that merely because the applicant was arrested on 2 November 1986 and that the detention order was issued only on 19 December 1986 such a delay by itself must render the detention bad. In this connection I must say at once that I am not suggesting that the police and the inquiry officers could take their own sweet time to carry out the investigations. All that I am saying is that the underlying policy of the Act is to ensure that (i) the police should not be allowed to abuse the power conferred under s. 3(1) and (ii) there must be sufficient and well-founded materials placed before the Minister before he can arrive at a proper and correct decision. In short the Act does not allow any arbitrary detention based on tenuous grounds and hence Parliament in passing the Act devised the elaborate investigations that must be carried out and acknowledged that such investigations might be time consuming. It is for this reason that Parliament had set out clearly that a person could not be detained for more than 60 days without a detention order.

Another point taken up by the learned Counsel was that since the detention order was issued on 19 December 1986 and it was only served on the applicant on 25 December 1986 (6 days later) such an unexplained delay would also render the detention invalid in that the service was not in compliance with s. 9(1) of the Act which says that a copy of the order of the Minister made under s. 6(1) "shall as soon as may be after the making of the order thereof be served" on the applicant. It is to be noted that s. 6(1) does not use the word forwith and instead says "as soon as may be". An illustration of the meanings of "forthwith" and "as soon as may be" can be seen in the case of *K.N. Joglekar v. Commissioner of Police* [1957] *AIR* SC 28. The contention of the petitioners in that case was that when the Commissioner of Police passed the orders for detention on 13 January 1956, it was his duty under the s. 3(3) of the Preventive Detention Act to report the fact forthwith to the State Government

and as he did not do so until 21 January 1956 he had acted in contravention of the statute and that the detention was therefore illegal. In rejecting the contention the Indian Supreme Court has this to say at p. 32,

> We agree that "forthwith" in s. 3.(3) cannot mean the same thing as "as soon as may be" in s. 7, and that the former is more peremptory than the latter. The difference between the two expressions lies, in our opinion, in this that while under s. 7 the time that is allowed to the authority to send the communication to the detenu is what is reasonably convenient, under s. 3(3) what is allowed is only the period during which he could not, without any fault of his own, send the report.
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> Under s. 7 the question is whether the time taken for communicating the grounds is reasonably requisite. Under s. 3(3) it is whether the report has been sent at the earliest point of the time possible, and when there is an interval of time between the date of the order and the date of the report, what has to be considered is whether the delay in sending the report could have been avoided.

Now, if it was the intention of Parliament that the detention order must be served on the person concerned immediately upon the issue of the same, it would have used the word "forthwith" instead of the words "as soon as may be". In the present case a 6-day delay is certainly not unreasonable considering that the detention order was made by the 1st respondent in Kuala Lumpur and the service of the order had to be effected on him at Alor Setar.

As the third contention of the learned Counsel overlaps with his sixth and seventh contentions I shall deal with these three contentions together. The issues raised in these three contentions were that (i) the statement of the allegations of fact accompanying the detention order contained allegations of the past activities of the applicant which were too remote in time and had no *nexus* to the objects of the Act and (ii) at any rate the allegations were so vague as to disable the applicant from making representations to the Advisory Board. On the question of the allegations of fact being based on the past activities of the applicant, the answer to that question can be found in the case of *Sahib Singh Dugel v. Union of India* [1966] AIR SC 340. In that case the Indian Supreme Court held that the detaining authority had every right to take account of the past activities of the petitioners which ranged over two years before the date of detention. Thus at p. 342 it is stated:

> As was pointed out by this Court in *Rameshwar Shaws 's* case, [1964] AIR SC 334, detention is made generally in the light of the evidence about the past activities of the person concerned. But these past activities should ordinarily be proximate in point of time in order to justify the order of detention. In the present cases the petitioners had been in jail for only three months before the order of detention was passed. It cannot be said that the conduct of the petitioners before this period of three months is not proximate enough to justify an order of detention based on that conduct. As a matter of fact, the affidavit on behalf of the Government of India is that the material in respect of the activities of the petitioners ranged over a period of two years before the date of detention and that was taken into account to come to the conclusion whether the detention under the Rules was justified or not. We are therefore of opinion that the petitioners cannot get advantage of the decision of this Court in *Rameshwar Shaw's* case, [1964] AIR SC 334, on the facts in the present cases.

Likewise in the case of *Karam Singh v. Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 MLJ 129 Ibrahim J said at p. 135:

> The eleven allegations of fact stretched in point of time from 1957 throughout the years to March 1967. The order had been based on the alleged accumulated activities of the applicant and the satisfaction of the Cabinet being subjective it is not open to the Court to examine the

> sufficiency of the allegations merely on the ground that some of them had happened a number of years before the order was made. When considering the question as to whether a person should be detained it is evident that the authority would have to rely on the evidence of the past conduct or antecedent history of that person.

This proposition was approved by the majority of the Judges of the Federal Court when the case went on appeal to it. In the present case a cursory glance at the statement of allegations of fact is sufficient to convince one that the past activities of the applicant as stated in the statement are not only relevant indeed they are the very activities with which the Act is trying to prevent any person from carrying out. The very purpose of the Act is to provide for the preventive detention of persons associated with any activity relating to or involving the trafficking in dangerous drugs - see the long title and s. 6(1) of the Act. As to the question of the allegations of fact being vague the answer to this contention is encapsulated in the following passage of Das J in his judgment in *State of Bombay v. Atma Ram* [1951] AIR SC 157:

> Vagueness of the grounds on which satisfaction of the authority is founded cannot be treated as on the same footing as the irrelevancy of the grounds, unless the vagueness be such as may, by itself, be cogent evidence in proof of bad faith. If the grounds are relevant to the objects of the legislation and if there is no proof of bad faith, then mere vagueness of the grounds cannot vitiate the satisfaction founded on them. The satisfaction being subjective, the Court cannot arrogate to itself the responsibility of judging the sufficiency or otherwise of the grounds. It is true that at the time those decisions were given the Constitution had not come into force and there were no fundamental rights, but these well established principles were recognised and adopted by all members of the Court in *Gopalan's* case [1950] AIR SCR 88 which came up for consideration after the Constitution had come into force. In that case it was held unanimously that under s. 3, Preventive Detention Act 1950, the satisfaction of the authority was purely subjective and could not, in the absence of proof of bad faith, be questioned at all and that s. 3 was not unconstitutional. It is true that the arguments now advanced were not advanced in exactly the same form on that occasion, but that fact mades no difference for the arguments have no force as they are founded on the assumption that the grounds on which an order may be made must be such as will, when communicated, be sufficiently full and precise so as to enable the detenu to make a representation. I find no warrant for such an assumption. Indeed, the fact that this Court has held that s. 3 of the Act which makes the satisfaction of the authority a purely subjective matter is not unconstitutional clearly destroys the cogency of the argument formulated as hereinbefore stated. The decision in *Gopalan's* case, [1950] AIR SCR 88 as to the validity of s. 3 of the Act makes it impossible to accept this argument.

It is true that it is a minority judgment, nevertheless Suffian FJ (as he then was) in his judgment in the *Karam Singh* case (*supra*) agreed with the propositions discussed in the minority judgment (see p. 149 and 150). A vivid illustration of the power of a Court in *habeas corpus* proceedings to examine the grounds upon which the decision of a detaining authority is based can be found in the following passage of the judgment of Abdoolcader J (as he then was) in *Yeap Hock Seng v. Minister of Home Affairs Malaysia* [1975] 2 MLJ 279. Thus His Lordship said at p. 282:

> It is, of course, settled law that the subjective determination of the Minister is not justiciable *(Karam Singh v. Menteri Hal Ehwal Dalam Negeri, Malaysia; Sadhu Singh v. The Delhi Administration.* The Courts have consistently declined to review the exercise of ministerial discretion when its validity is impugned in *habeas corpus* proceedings (*Liversidge v. Anderson; Greene v. Secretary of State for Home Affairs*). The Court cannot be invited to undertake an investigation into the sufficiency of the matters upon which the satisfaction of the Minister purports to be grounded but can examine the grounds disclosed by the Minister to see they

are relevant to the object which the Ordinance prescribes. In proceedings such as these the Court does not sit in appeal against the decision of the Minister regarding materials on which the detention order was made. The Court does not examine the adequacy or truth of these materials and cannot interfere with the decision on the ground that if the Court had examined them it would have come to a different conclusion.

In his fourth contention, the learned Counsel complained that the Act enjoined the Minister charged with the responsibility for internal security (see the definition of "Minister" in s. 2 of the Act) to exercise the powers conferred by the Act and it was therefore wrong for the Deputy Minister to exercise the power conferred under s. 6(1). On this point it is worthy to note that under Clause (3) of Article 43A as amended by Act A566 of 1983 the Deputy Minister is conferred with all the powers of a Minister to enable him to assist the Minister in the discharge of the latter's duties and functions pertaining to his Ministry. The purpose of giving the powers to a Deputy Minister is obvious since in the administration of government the functions which are given to Ministers are functions so multifarious that no Minister could ever personally attend to them - see per judgment of Lord Greene MR in *Carltona Ltd. v. Commissioners of Works* [1943] 2 All ER 560 @ 563 A-C. I cannot therefore concede to this contention of the learned Counsel.

In his final contention the learned Counsel argued that as the copy of the detention order served on the applicant was not signed by the Deputy Minister but only contained a rubber stamp impression bearing the words "T.T. Dato' Megat Junis b. Megat Ayob", it was wrong for the police to serve an unsigned copy of the detention order on the applicant. I suppose what the learned Counsel meant was this. As the detention order that was served on the applicant did not bear the signature of the Deputy Minister, the order was an invalid order and it must therefore follow that no detention order at all was served on the applicant as required by s. 9(1) of the Act. The learned DPP, however, pointed out to this Court that the original copy of the detention order attached to the affidavit of the Deputy Minister as Exhibit 'MJMA1' shows that it bears the signature of the Deputy Minister and it also bears the signature of the applicant acknowledging receipt of a copy of the detention order, two copies of the statement of allegations of fact, a copy of the notice informing the applicant of his right to make representations to the Advisory Board and the relevant form to enable him to make such representations. In view of this I do not think it can be seriously contended that the police had failed to comply with the provisions of s. 9(1) of the Act. The learned Counsel also pointed out to this Court the following statement made by the Deputy Minister in para. 4 of his affidavit: "My attention was drawn to the important aspects of the case." This statement, so said the learned Counsel, indicated that the Deputy Minister did not direct his mind fully on all the relevant matters but only on the "the important aspects of the case". I regret that I cannot accept the argument of the learned Counsel simply because one must read the affidavit as a whole and upon my reading of the affidavit of the Deputy Minister as well as the affidavit of Abdul Rahim B. Hashi, the Assistant Secretary of the Ministry of Home Affairs, I am satisfied that the Deputy Minister had fully considered the relevant police report and also the report from the inquiry officers before he made his decision to issue the detention order.

There is one more matter which I should perhaps briefly deal with. In para. 7(c) of the affidavit of Puan Wong Nyok Choo dated 22 February 1987, she alleged that the detention of the applicant was done in bad faith in that "the applicant was released after being earlier detained under s. 117 of the Criminal Procedure Code during which period of detention the police must have carried out their investigations and they were unable to sustain any charge against the applicant." By this allegation I take it that what she meant was that as the applicant was

earlier arrested and tentatively charged with committing an offence under the Dangerous Drugs Act 1952 and was in custody for 14 days under s. 117 of the CPC and later was discharged for lack of evidence, the subsequent detention of the applicant under s. 6(1) of the Act shows that the Deputy Minister acted *mala fide* in ordering the detention. A similar situation occurred in *Yeap Hock Seng's* case (*supra*). There the applicant was also earlier arrested and tentatively charged with committing murder and later the prosecuting officer requested the presiding magistrate to grant a discharge to the applicant obviously for lack of evidence to sustain the charge. As the applicant walked out of the Court house he was immediately apprehended and detained under an order of detention made against him by the relevant Minister under s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969. He too challenged the validity of the detention alleging *mala fides* on the part of the detention alleging *mala fides* on the part of the detaining authority. After an exhaustive review of a number of Indian authorities, Abdoolcader J (as he then was) dismissed the application and in doing so His Lordship made the following observation (see p. 284):

> It is therefore abundantly clear that there is overwhelming persuasive authority, with which I have no reason to disagree (and the authorities I have adumbrated on this point are by no means exhaustive) that the order made by the Minister in respect of the applicant in the circumstances of this matter does not *ipso facto* amount to the exercise of his powers under s. 4(1) of the Ordinance for ulterior purposes or purposes other than that mentioned in the detention order so as to vitiate and render it *mala fide*. The onus of proving *mala fides* on the part of the detaining authority is on the applicant and is normally extremely difficult to discharge as what is required is proof of improper or bad motive in order to invalidate the detention order for *mala fides* and not mere suspicion.
>
> It might perhaps be open to the applicant to suggest that the circumstances surrounding his case might possibly reflect some suspicion of *mala fides* but this cannot be taken for granted or considered sufficient proof by itself. It is my considered view that the object and ambit of the Ordinance is such and the purposes specified in s. 4(1) are so wide as to negate any right to the applicant in the circumstances of his case to demand that the grave question of his guilt or innocence on the tentative charge of murder should be left to the Court and the jury-box as the sanctuary of his life and liberty and not submerged in the amplitude of preventive detention on the basis of executive discretion and satisfaction conceived in the mind of the Minister or perhaps animated in his breast within the purview of the prescribed statutory provision on relevant grounds. Mere circumvention of the ordinary process of law cannot by itself amount to *mala fides* as otherwise this would in most cases virtually result in rendering moribund and impotent the laws legally enacted to provide for preventive detention for specified purposes.

With respect, I would apply a similar approach to the contention raised in the affidavit of Puan Wong Nyok Choo.

For the reasons stated above, the application is dismissed.

Also found at [1988] 2 CLJ 274